



— THE LAW OFFICE OF —
STEVEN ALIZIO

September 20, 2024

VIA ECF

Hon. Lorna G. Schofield
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *E.K., et al. v. New York City Department of Educ.*, 23-cv-11276

Dear Judge Schofield,

Our office represents Plaintiffs E.K. and E.K., appearing individually and on behalf of their minor child with a disability, J.A.K., in the above-referenced action. I write jointly with Defendant's counsel and pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, to respectfully request leave to file under seal the affidavit of E.K., which Plaintiffs intend to submit in support of Plaintiffs' Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment.

This matter is brought pursuant to the Individuals with Disabilities Education Act ("IDEA") and involves the educational services provided to a minor student, J.A.K. The affidavit of E.K. for which Plaintiffs seek leave to file under seal, necessarily reveals the identity of E.K. and would allow the public to determine the identity of J.A.K., a minor child. This information should not be made public in compliance with Rule 5.2(a). *See Fed. R. Civ. P. 5.2(a).*

Knowledge of E.K.'s identity, and in turn J.A.K.'s identity, would allow the public to learn "personally identifiable information" describing J.A.K.'s medical history and disabilities, in addition to J.A.K.'s educational records and information detailing the student's educational progress and history that has been detailed in the pleadings and other filings in this matter. This information is confidential under the IDEA and the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA), § 300.32 (including a "list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty" as personally identifiable information under IDEA). Additionally, as the underlying administrative proceeding is presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). "For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs." *L.B. v. New York City Dept of Ed.*, 15-cv-3176, 2015 U.S. Dist. LEXIS 127081, *2 (S.D.N.Y. Sept. 22, 2015) (citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012); *A.M. ex rel. Y.N. v. New York City Dep't of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)). Therefore, the parties believe that this information is appropriately filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006)

Application **GRANTED**. A three-part inquiry determines whether to seal a document. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). For the reasons stated herein, the privacy interests of E.K. in keeping confidential their education and medical history outweighs the public's interest in access. The Clerk of Court is respectfully directed to close the motion at Dkt. No. 34.

Dated: September 25, 2024
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

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(Countervailing factors weighing in favor of sealing include, *inter alia*, the privacy interests of those resisting disclosure).

Accordingly, the parties submit that the *Lugosch* standard is met as protecting the privacy interests of the minor student in keeping confidential that child's education and medical history constitutes a "compelling reason" to seal the affidavit of E.K. to be submitted with Plaintiffs' Cross Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgement and outweighs the public's interest in access. *Lugosch*, 435 F.3d at 121. As such, the parties respectfully request leave to file the certified administrative record in this action under seal.

Thank you for Your Honor's consideration of this request.

/s/ *Steven J. Alizio*
Steven J. Alizio, Esq.
Justin B. Shane, Esq.
The Law Office of Steven Alizio, PLLC
Counsel for Plaintiffs

cc: **BY ECF**
Counsel of record